HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 758 of 2004 (MS)

Pitamber Maulekhi ..... Petitioner

Versus

Addl. District Judge, Nainital & others..... Respondents

Sri M.C.Pandey, Advocate for the petitioner
Sri Sharad Sharma, Advocate for the respondents.

Dated: 20.8.2004

Hon, Rajesh Tandon J.

Heard the learned counsel for the parties.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing the orders dated 28.7.2004, 9.7.2004 and 3.8.2004, annexure-5 to the writ petition.

Briefly stated the facts giving rise to the present writ petition are that the petitioner has purchased a plot no. 14 in Poplar's Compound, Mallital, Nainital and had constructed a Hotel therein. An agreement of sale was executed on 30.4.1985 which was registered with the Sub Registrar, Nainital and subsequently had executed another agreement on 2.5.1985, after receiving additional part of balance sale consideration. The petitioner approached the respondent no.2 for executing the agreement but she did not do so and the petitioner filed a suit No. 106 of 1989 Pitamber Maulekhi vs. Smt. Virmawati Verma for specific performance in the Court of Civil Judge,

Nainital. In April 1998 a compromise was arrive at between the parties according to which the petitioner had to pay a sum of rupees one lakh and the compromise contained the fact that in the temporary Tin shed so constructed in the plot under the suit with Respondent no.2 Sri Laik Ahamad was residing as a chawkidar. Further under the compromise the petitioner had to pay nothing to the responded no.2 No inters or damages were payable to the respondent no.2 by the petitioner and a decree was passed covering the compromise as part thereof. The respondent no.2 has filed a petition for execution of the decree passed by the Civil Judge by way of compromise which was part of the decree. Orders were passed during execution proceedings. The first order was passed on 9.7.2004 for putting the petitioner in the civil prison. Another order was passed on 3.8.2004 for referring the matter to the Bar Council and on 28.7.2004 order was passed for issue of the recovery certificate.

The counsel for the petitioner has challenged all the three orders on the ground that since there was a compromise decree passed between the parties by which the suit of the petitioner for specific performance was decreed and the petitioner has to get the sale deed executed after paying the sum of Rs.one lakh. Efforts should have been made by the executing court for compliance of the decree and the petitioner is ready to pay Rs. One lakh in pursuance of the compromise entered between the parties.

Sri Sharad Sharma, Counsel for the respondent no. 2 has opposed the writ petition and has submitted that the writ petition against the order passed in the execution of decree is not maintainable. He has also submitted that the respondent no.2 is entitled to get interest on the decreetal amount as the

petitioner has n0t fulfilled his obligation of the compromise decree and the respondent no.2 is free to execute sale deed to any other person.

In view of aforesaid fact, impugned orders dated 28.7.2004, 9.7.2004 and 3.8.2004 are quashed.

Both the parties are directed to appear before the District Judge, Nainital on 28.9.2004. The District Judge, shall forward the papers to the sub Registrar and sale deed shall be executed on 31.9.2004.

The petitioner shall produce a draft/banker's cheque before the Sub-Registrar. After execution of the sale deed papers shall be put up before the District Judge on 6.10.2004. In case the sale deed is not executed by the that date the respondent shall be at liberty to proceed for the execution against the petitioner.

Subject to the aforesaid observation, the writ petition is disposed of. No order as to costs.

(Rajesh Tandon J.)

20,8,2004
*Dhyani